

AMENDED IN ASSEMBLY APRIL 14, 2015

AMENDED IN ASSEMBLY MARCH 18, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 348

Introduced by Assembly Member Brown
(Coauthor: Assembly Member Mathis)

February 17, 2015

An act to amend Section 1420 of the Health and Safety Code, relating to long-term health care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 348, as amended, Brown. Long-term health care facilities.

(1) Existing law provides for the licensure and regulation by the State Department of Public Health of health care facilities, including long-term health care facilities, as defined. Existing law establishes procedures to be followed when the department receives a written or oral complaint about a long-term health care facility. A complaint is defined to mean any notice to the department, other than a report from the facility, of an alleged violation of applicable requirements of state or federal law or any alleged facts that might constitute a violation.

This bill would require the department to complete its investigation of the complaint within 40 working days of its receipt, except that this period may be extended up to an additional 30 *working* days if the department has diligently attempted, but has not been able to obtain, necessary evidence related to the investigation. The bill would require the department, if it extends an investigation beyond 40 working days, to notify the complainant, in writing, of the basis for the extension. The bill would require, effective July 1, 2016, that the department's written

determination provide specific findings concerning each alleged ~~violation~~, *violation* and include a summary of the evidence upon which the determination is based. The bill would require the department to comply with those specified time periods established for investigations and inspections of complaints from a facility of an alleged violation of applicable requirements of state or federal law or any alleged facts that may constitute an alleged violation of these requirements. *The bill would also require the department to analyze its compliance with the timeframes for investigations on a quarterly basis and post those findings on its Internet Web site.*

(2) Existing law provides the complainant with 5 business days after receipt of the notice of the department's determination in which to request an informal conference, as specified.

This bill would instead provide the complainant with 15 days after receipt of the notice in which to request an informal conference.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1420 of the Health and Safety Code is
2 amended to read:
3 1420. (a) (1) Upon receipt of a written or oral complaint, the
4 department shall assign an inspector to make a preliminary review
5 of the complaint and shall notify the complainant within two
6 working days of the receipt of the complaint of the name of the
7 inspector. Unless the department determines that the complaint is
8 willfully intended to harass a licensee or is without any reasonable
9 basis, it shall make an onsite inspection or investigation within 10
10 working days of the receipt of the complaint. In any case in which
11 the complaint involves a threat of imminent danger of death or
12 serious bodily harm, the department shall make an onsite inspection
13 or investigation as soon as practicable, and in no case more than
14 24 hours of the receipt of the complaint. In any event, the
15 complainant shall be promptly informed of the department's
16 proposed course of action and of the opportunity to accompany
17 the inspector on the inspection or investigation of the facility. Upon
18 the request of either the complainant or the department, the
19 complainant or his or her representative, or both, may be allowed
20 to accompany the inspector to the site of the alleged violations

1 during his or her tour of the facility, unless the inspector determines
2 that the privacy of any patient would be violated thereby.

3 (2) When conducting an onsite inspection or investigation
4 pursuant to this section, the department shall collect and evaluate
5 all available evidence and may issue a citation based upon, but not
6 limited to, all of the following:

7 (A) Observed conditions.

8 (B) Statements of witnesses.

9 (C) Facility records.

10 (3) The department shall complete its investigation within 40
11 working days from receipt of the complaint. The 40-working-day
12 period may be extended up to an additional 30 *working* days if the
13 department has diligently attempted, but has not been able to
14 obtain, necessary evidence related to the investigation. ~~The~~
15 ~~department shall analyze its compliance with this requirement in~~
16 ~~its annual system and staffing analysis prepared pursuant to~~
17 ~~subparagraph (B) of paragraph (2) of subdivision (d) of Section~~
18 ~~1266.~~

19 (4) If the department extends an investigation beyond 40
20 working days, it shall notify the complainant, in writing, of the
21 basis for the extension, and shall include in the notice any
22 outstanding evidence and the sources from which the evidence has
23 been sought, and the anticipated completion date.

24 (5) Within 10 working days of the completion of the complaint
25 investigation, the department shall notify the complainant and
26 licensee, in writing, of the department's determination as a result
27 of the inspection or investigation.

28 (6) Effective July 1, 2016, the department's written
29 determination shall provide specific findings concerning each
30 alleged violation, and shall include a summary of the evidence
31 upon which the determination is made. The written determination
32 shall not disclose the names of individual residents.

33 (b) Upon being notified of the department's determination as a
34 result of the inspection or investigation, a complainant who is
35 dissatisfied with the department's determination, regarding a matter
36 which would pose a threat to the health, safety, security, welfare,
37 or rights of a resident, shall be notified by the department of the
38 right to an informal conference, as set forth in this section. The
39 complainant may, within 15 days after receipt of the notice, notify
40 the director in writing of his or her request for an informal

1 conference. The informal conference shall be held with the
2 designee of the director for the county in which the long-term
3 health care facility that is the subject of the complaint is located.
4 The long-term health care facility may participate as a party in this
5 informal conference. The director's designee shall notify the
6 complainant and licensee of his or her determination within 10
7 working days after the informal conference and shall apprise the
8 complainant and licensee in writing of the appeal rights provided
9 in subdivision (c).

10 (c) If the complainant is dissatisfied with the determination of
11 the director's designee in the county in which the facility is located,
12 the complainant may, within 15 days after receipt of this
13 determination, notify in writing the Deputy Director of the
14 Licensing and Certification Division of the department, who shall
15 assign the request to a representative of the Complainant Appeals
16 Unit for review of the facts that led to both determinations. As a
17 part of the Complainant Appeals Unit's independent investigation,
18 and at the request of the complainant, the representative shall
19 interview the complainant in the district office where the complaint
20 was initially referred. Based upon this review, the Deputy Director
21 of the Licensing and Certification Division of the department shall
22 make his or her own determination and notify the complainant and
23 the facility within 30 days.

24 (d) Any citation issued as a result of a conference or review
25 provided for in subdivision (b) or (c) shall be issued and served
26 upon the facility within three working days of the final
27 determination, unless the licensee agrees in writing to an extension
28 of this time. Service shall be effected either personally or by
29 registered or certified mail. A copy of the citation shall also be
30 sent to each complainant by registered or certified mail.

31 (e) A miniexit conference shall be held with the administrator
32 or his or her representative upon leaving the facility at the
33 completion of the investigation to inform him or her of the status
34 of the investigation. The department shall also state the items of
35 noncompliance and compliance found as a result of a complaint
36 and those items found to be in compliance, provided the disclosure
37 maintains the anonymity of the complainant. In any matter in which
38 there is a reasonable probability that the identity of the complainant
39 will not remain anonymous, the department shall also notify the

1 facility that it is unlawful to discriminate or seek retaliation against
2 a resident, employee, or complainant.

3 (f) For purposes of this section, “complaint” means any oral or
4 written notice to the department, other than a report from the
5 facility, of an alleged violation of applicable requirements of state
6 or federal law or any alleged facts that might constitute a violation
7 of these requirements.

8 (g) The department shall apply the timeframes for investigation
9 or inspection established in this section to a report from the facility
10 of an alleged violation of applicable requirements of state or federal
11 law or any alleged facts that might constitute a violation of those
12 requirements.

13 (h) *The department shall analyze its compliance with the*
14 *timeframes for investigations established in this section on a*
15 *quarterly basis, and shall, on a quarterly basis, post findings from*
16 *the analysis on its Internet Web site. The analysis shall provide*
17 *data on the department’s performance, and shall include, at a*
18 *minimum, all of the following data elements:*

19 (1) *The number of open investigations.*

20 (2) *The number of completed investigations.*

21 (3) *The number and percentage of investigations completed*
22 *within the 40-working-day timeframe.*

23 (4) *The number and percentage of investigations that required*
24 *a 30-working-day extension.*

25 (5) *The number and percentage of investigations that required*
26 *a 30-working-day extension and were completed within the*
27 *extended time period.*

28 (6) *The average length of time to complete an investigation.*

29 (7) *The average length of time to complete an investigation that*
30 *was not completed by the end of the 30-working-day extended time*
31 *period.*

32 ~~(h)~~

33 (i) Nothing in this section shall be interpreted to diminish the
34 department’s authority and obligation to investigate any alleged
35 violation of applicable requirements of state or federal law, or any
36 alleged facts that might constitute a violation of applicable
37 requirements of state or federal law, and to enforce applicable
38 requirements of law.